IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Revision No. 62 of 1993
Date of Decision: 11.7.2007

Balak Ram.

..... Petitioner through Shri J.S.Virk, Advocate.

Versus

The State of Haryana.

..... Respondent through Ms.Shalini Attri, Assistant Advocate General, Haryana.

CORAM: HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

....

**Mahesh Grover,J.**

This revision petition is directed against judgment dated 1.2.1993 of the Additional Sessions Judge, Karnal vide which the appeal preferred by the petitioner against the judgment and order of sentence dated 22.5.1990 rendered by the Sub Divisional Judicial Magistrate, Panipat convicting and sentencing him for an offence punishable under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act,1954 (for short, `the Act') to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- and in default of payment thereof, to further undergo rigorous imprisonment for three months, was dismissed.

On 20.12.1983, a sample of milk was seized from the petitioner which, on analysis, was found to be 3.5% deficient in milk solids not fat. On

a complaint having been preferred, the petitioner was proceeded against by the trial Court for having committed an offence punishable under Section 7 read with Section 16(1)(a)(i) of the Act and was charged accordingly.

On the basis of the evidence, the petitioner was convicted and sentenced by the trial Court in the manner noticed hereinabove.

The appeal filed by the petitioner against his conviction and sentence awarded to him was dismissed by the learned Additional Sessions Judge, Karnal.

In the present revision petition, the first contention of the learned counsel for the petitioner is that the factum of stirring of milk before taking the sample was not mentioned in the complaint which is on a printed format wherein, although, there is a mention of the milk having been stirred, but the requirement of the law is that it should be specifically averred in the complaint by the Food Inspector, who had seized the sample.

The next contention raised by the learned counsel for the petitioner is that the milk had not been stirred properly as it is in evidence that the milk had been stirred with a milk measure which is about six inches, whereas the height of the drum was about 18 to 24 inches having a capacity of 40 litres. He argued that the milk measure of six inches could not have made the milk homogeneous as the quantity of the milk in the drum was about 28 kgs.

On the basis of the above contentions, learned counsel for the petitioner urged that the petitioner contended that the petitioner deserves acquittal. He relied on the judgments of this Court in Chhaju Ram Versus The State of Haryana, 1993(2) Prevention of Food Adulteration Cases 78;

Ratti Ram Versus The State of Haryana, 1993(2) Prevention of Food Adulteration Cases 81; Sawaran Singh Versus State of Haryana, 1998(1) Prevention of Food Adulteration Cases 45 and State of Haryana Versus Kartar Singh, 1998(2) Prevention of Food Adulteration Cases 281.

Ms.Shalini Attri, Assistant Advocate General, Haryana, on the other hand, contended that there was no infirmity in the conviction and sentence awarded to the petitioner as the milk was clearly below the prescribed standards under the Act and in view of this, there could be no escape from the conclusion that he had committed an offence punishable under Section 7 read with section 16(1)(a)(i) thereof.

I have thoughtfully considered the respective contentions and have perused the record.

It is imperative upon the Food Inspector to mention the factum of the stirring of the milk in the complaint as it is a pre-requisite prescribed under the Act. The complaints filed on a printed format do not incorporate all the requisites which are required to be made before the sample is taken. Therefore, the Food Inspector, who seizes the sample, is obliged to mention in the complaint the recourse he has taken to so that the person from whom the sample is taken, may avail of his right to object. The non-mentioning of the procedure followed by the Food Inspector at the time of seizing the sample in the complaint on a printed format implies that the necessary pre-requisites have not been met, which, in turn, gives a valuable right to the aggrieved person to assail the action taken against him.

In this case, the complaint has been filed on a printed proforma and the Food Inspector has failed to mention therein the procedure he

adopted before taking the sample. The factum of stirring is not mentioned in his hand and even though, he has stated so in his evidence, it shall be viewed as an improvement by the Court. This also strengthens the argument of the learned counsel for the petitioner that milk was not made homogeneous.

The aforesaid fact coupled with the fact that there is evidence on record to suggest that the milk was not made homogeneous as is required to be done before taking the sample because a small measure of six inches may not be sufficient to make the milk homogeneous in a drum having a capacity of 40 litres and having milk of 28 Kgs. This causes a gaping hole in the version of the prosecution.

In view of the above, the law laid down by this Court in Chhaju Ram's case (supra) is squarely applicable on the facts of this case and the petitioner is entitled to the benefit of doubt. The relevant portions of the said judgment are extracted below:-

> "..... The law is well settled that before milk sample is taken, which is a liquid, it should be stirred and made homogenous. The reason for this is that the milk, which is liquid, contains various constituents in different forms. Some are very thoroughly mixed up in it but some though, are mixed in it, are lighter and do not have the same specific gravity and weight as the other constituents have. Fat, for example, is one which differs in some ways from the other constituents of the milk. It is lighter in weight and it does not remain mixed up with the remaining liquid for a very long time. If the milk is allowed to

stand for some time, its fat contents rises to the top and accumulates there. If a sample is taken without mixing the milk thoroughly or, in other words, making it homogenous then the fat being at the top, its contents will not be in the same quantity in the lower portion as those are in the upper part. It is for this reason that the Courts have laid down that before taking the sample of milk it has to be made homogenous so that the sample remains representative.

In the case in hand, the evidence of both the witnesses is that the sample before it was taken, was homogenous. The complaint does not contain any reference about the stirring of the milk. It was argued before me that if it is not mentioned in the complaint that the milk was stirred before the sample was taken, then the accused is entitled to acquittal. The circumstances are to be proved by the complainant. There is no proforma prescribed for the drafting of the complaints. Necessary facts which constitute an offence have to be mentioned in the complaint. If some essential facts or essential requirement which are pre-requisite before doing an act are not mentioned in a complaint, then the accused, in given cases, has the right to say that the prosecution has made an improvement in its case. It is the practice in the States of Punjab and Haryana that the Food Inspectors have got a form of complaint printed. They simply fill in the blanks in accordance with the facts of the cases before filing those in Courts. Such a practice is not

healthy, as such proformas are not comprehensive to contain all the facts of every conceivable case. It is high time that the Food Inspectors realise that such printed proformas which are deficient in certain aspects should not be used for filing the complaints. Almost in every case, which I have come across, the mention of stirring of the milk is singularly absent. In many circumstances, as in this case, this fact assumes importance to know whether the Food Inspector has performed his duties appropriately and in accordance with the accepted rules of taking samples. It is very easy for a witness to say such a fact at the time of evidence. If this improvement is allowed in every case, then a day will come when the Food Inspectors will omit to mention in the complaints how the sample was taken; how and what type of preservative and what quantity of it was added to the sample. I, therefore, do not feel inclined to grant this latitude to the Food Inspectors to make improvements in the case under the Prevention of Food Adulteration Act as it has been done in this case by mentioning only at evidence stage about the stirring of the milk. On evidence, I find that it is a case of deliberate improvement."

Consequently, this revision petition is accepted, the judgments of the Courts below are set aside and the petitioner is acquitted of the charge framed against him.

**July 11,2007** **( Mahesh Grover )**
**"SCM"** **Judge**